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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,087	11/08/2001	Brian Francis Gray	AA432F	5838

27752 7590 08/16/2006

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EXAMINER	
VANIK, DAVID L	
ART UNIT	**PAPER NUMBER**
1615	

DATE MAILED: 08/16/2006

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/009,087
Filing Date: November 08, 2001
Appellant(s): GRAY ET AL.

Brian Francis Gray
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/14/2004 appealing from the Office action mailed 4/20/2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The prior art relied on is WO 99/22684 ('684).

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/22684 ('684).

'684 teaches an absorbent article which absorbs body exudates (page 1, lines 27-28). The reference teaches a liquid pervious topsheet and a liquid impervious backsheet which is joined to the topsheet (page 10, lines 7-29). The topsheet is disposed at a body surface and the backsheet is disposed at the garment surface (page 10, lines 7-29). The reference teaches an absorbent core which is located between the topsheet and the backsheet (page 7, lines 19-35, page 8, lines 1-10, and Figures 1-4).

'684 does not specifically teach a skin care composition having a "greater basis weight" than the preferential acquisition zone. The reference teaches an absorbent article comprising a topsheet, backsheet, and an absorbent core located therebetween, an acquisition zone and a skin care composition disposed thereon. '684 teaches that the configuration and and construction of the absorbent core may have varying acquisition zones (i.e. lower average density and lower average basis weight

zones)(page 8, lines 26-30), and the size and absorbent capacity of the absorbent core may be varied to accommodate different uses such as diapers and sanitary napkins to accommodate the wearer.

It would have been within the skill of the ordinary practitioner at the time the invention was made to us the teachings of the '684 reference, with the expectation of achieving absorbent article comprising a skin care composition which is known in the art for absorbing body exudates as instantly claimed. Therefore, it would have been obvious to claim an absorbent article, comprising a topsheet, backsheet, and absorbent core located therebetween, including a skin care composition disposed on the topsheet of the absorbent article.

(10) Response to Argument

Appellant argues that '684 fails to establish a *primia facia* case of obviousness for the following reasons (A and B):

(A) '684 does not teach the application of differing basis weights of a skin care composition to various zones of the absorbent article.

The examiner respectfully disagrees with this assertion and maintains that the instant claims 1-10 are obvious in view of '684. As explained above, '684 teaches an absorbent article comprising a topsheet disposed at the body surface, a backsheet adjacent to the garment surface, and an absorbent core located between said

backsheet and said topsheet (page 10, lines 7-29). Additionally, the absorbent article advanced by '684 may comprise numerous "panels," located at various positions throughout the absorbent article. Below is a figure illustrating the location of various "panels" (Figure 12):

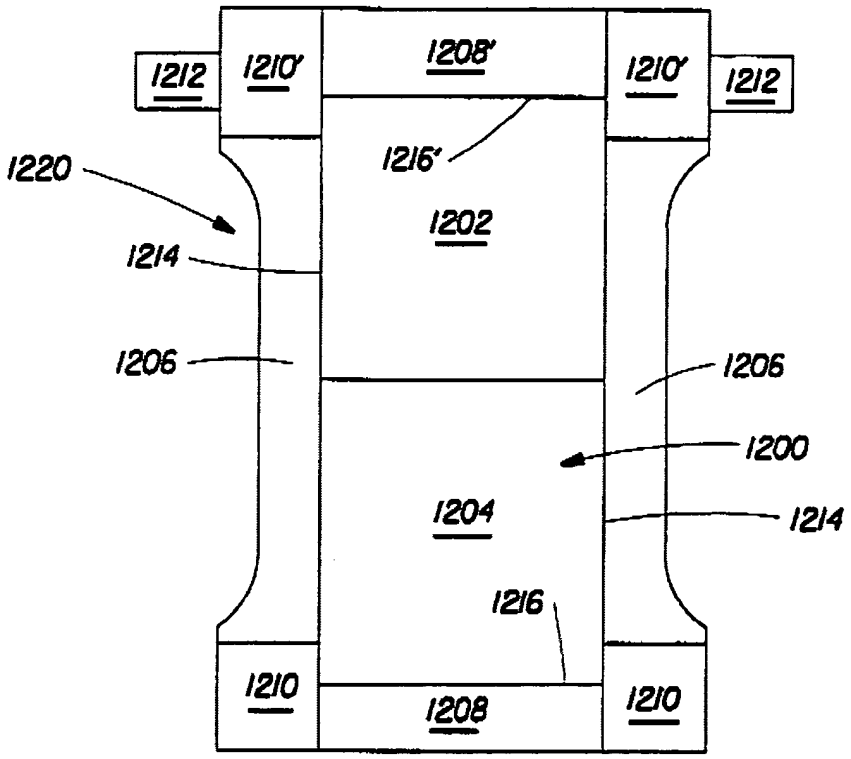

Fig. 12

Of particular note are panel sections 1202 and 1204. According to '684, 1202 can be considered a BM/anus panel, covering the backside of the user, while 1204 can cover the genitals of a user (page 32, lines 29-35). In this regard, 1202 appears to be equivalent to the "skin care zone" and 1204 can be construed as being tantamount to the "preferential acquisition zone" as claimed in the instant application (compare Figure

12 of '684 with Figure 1 of the instant application). According to '684, the position of the genital panel 1204 can be modified on the basis of whether the user is a female or male (page 33, lines 4-10).

One or more skin care compositions may be present in the individual panels of the absorbent article (page 34, line 1 – page 35, line 6). The panels may comprise the same or different skin care compositions on the basis of particular application (page 34, line 1 –page 35, lines 35, line 6). In one embodiment, any of the panels may be composition free (column 34, lines 27-28). According to '684, the amount of a given skin care composition will be dictated by the desired skin care benefits and such levels are "ascertainable by routine experimentation" (page 38, lines 29-33).

Because different amounts and types of waste are absorbed by different panels and the amount of skin care active can be formulated on the basis of routine experimentation, one of ordinary skill in the art would have been motivated to vary the amount of skin care active present in the different panels in the absorbent article advanced by '684. Based on the teachings of '684, there is a reasonable expectation that varying the amount of skin care composition in the different panels would result in a composition capable of operating as a non-irritating and effective absorbent article . As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the amount and panel location of the skin care agent in the absorbent article advanced by '684.

(B) Appellant also asserts that the instant application applies a single skin care formulation at a different basis weights on two different zones of the absorbent article, whereas '684 applies two different skin care formulations on two different regions.

The examiner respectfully disagrees with this assertion and maintains that the instant claims 1-10 are obvious in view of '684. As explained in '684, the panels may include skin care compositions of the same formulation (page 34, line 36 – page 35, line 6). This is because, according to '684, one or more of the panels may require the same skin care benefit (page 34, line 36 – page 35, line 6). Thus, given this teaching, one of ordinary skill in the art at the time the invention was made would have the ability to use the same skin care active in different panels. Moreover, the amount of the skin care composition is "ascertainable by routine experimentation" (page 38, lines 29-33).

(11) Related Proceeding(s) Appendix

The instant appeal was filed prior to the new rule changes.

For the above reasons, it is believed that the rejections should be sustained.

CONFEREES:

Respectfully submitted,

MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER

David Vanik, Ph.D.
Examiner
Art Unit 1615

8/10/06

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